

Exhibit 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION
CASE NO. 23-cv-00425-WBS-CSK

SHANNON RAY, KHALA TAYLOR,
PETER ROBINSON, KATHERINE
SEBBANE, and RUDY BARAJAS,
individually and on behalf
of all those similarly situated,

Plaintiffs,

vs.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, an unincorporated
association,

Defendant.

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VIDEOTAPED DEPOSITION OF ORLEY ASHENFELTER, Ph.D.
before RUTHANNE UNGERLEIDER, a Certified Court
Reporter and Notary Public of the State of New
Jersey, held at 502 Carnegie Center, Princeton,
New Jersey, on Thursday, December 5, 2024,
commencing at approximately 9:05 in the forenoon.

JOB No. 7045565

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ALSO PRESENT:
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1 Ray Plaintiffs and the witness.

2 MR. BEREZNEY: Good morning. Steve
3 Berezney, from Korein Tillery, on behalf of the Smart
4 Plaintiffs.

5 ORLEY CLARK ASHENFELTER, Ph.D., sworn.

6 DIRECT EXAMINATION BY MR. RAPHAEL:

7 Q Good morning, Professor Ashenfelter.

8 A Good morning.

9 Q You are an economics professor at
10 Princeton University, correct?

11 A I was. I just went Emeritus in July.

12 Q Oh, congratulations.

13 You have been deposed many times,
14 correct?

15 A Yes.

16 Q How many times?

17 A Well, not very often per year, but it's
18 been a lot of years. So, I don't know, it might be
19 20 or 30 maybe.

20 Q What was the most recent occasion on
21 which you were deposed?

22 A This summer.

23 Q And in what case was that?

24 A That was a merger case involving the
25 Federal Trade Commission was challenging the Kroger

1 A No.

2 Q Now, you previously provided expert
3 testimony in a case involving allegations of
4 collusion by hospitals in the Detroit area?

5 A Yes.

6 Q And that case was called Cason-Merenda?

7 A I don't remember what it was called,
8 actually, but it was in Detroit.

9 Q Can you think of any meaningful
10 differences between the labor market for registered
11 nurses in Detroit that you testified about in that
12 case and the labor market for coaching that you
13 defined in this case?

14 A Well, they're not the same labor market.

15 Q Okay.

16 A I would say they're different -- they
17 have different sets of skills.

18 Q Why are the nurses in the Detroit case
19 you testified in and the coaches in this case not in
20 the same market?

21 A Well, because they're not -- they're
22 not -- the nurses -- the coaches couldn't act as
23 nurses without having training in the nursing skills.
24 It's possible that some coaches do, in which case
25 they could be -- operate there.

1 me just ask the question again.

2 Do you have any opinion, sitting here
3 today, on any labor market related to coaching that
4 includes any coaching in college athletics?

5 A Well, I have not actually tried to
6 define an explicit labor market for coaching.

7 I think that answers your question.

8 Q I think it does.

9 Let's mark this as, I think, Exhibit 69.

10 A You want me to look at it?

11 Q She's got to mark it first.

12 (Whereupon November 1, 2024 Expert
13 Report is received and marked as Exhibit 69 for
14 identification.)

15 MR. STEWART: Thank you.

16 What did you say the number was, Justin?

17 MR. RAPHAEL: I believe this is 69.

18 Q Dr. Ashenfelter, do you recognize
19 Exhibit 69 as a copy of the report that was submitted
20 under your name on November 1 of 2024?

21 A Yes.

22 Q And you signed this report?

23 A Yes.

24 Q Who wrote this report?

25 A I wrote it.

1 A No, we didn't.

2 I mean, it is -- well, no, we didn't.

3 Q You have done that in prior cases,
4 though, right?

5 A In some previous work. And the work I
6 did actually, academic work, I have studied
7 especially race differences, but also differences by
8 gender in some aspects of labor market behavior.

9 Q Other than I think you mentioned issues
10 of race and gender, any other economic principles of
11 labor markets that are unique as compared to the
12 economic principles applicable to consumer product
13 markets?

14 A Well -- yes.

15 Probably the biggest subject which
16 doesn't really have an analogy in product markets is
17 the development of human capital or human resource
18 skills, those are -- that's an extremely broad
19 subject.

20 In other words, we don't take the
21 products as given, people actually change, and how
22 they invest in themselves or others invest in them is
23 a -- is another -- is a big subject in -- in the
24 labor -- in the study of labor markets, because it
25 brings -- tells you about what the skills are that

1 people have.

2 Q I think you're referring to human
3 capital theory?

4 A Yeah.

5 Q And human capital theory is foundational
6 to labor economics?

7 A It's important.

8 There's more to it than -- it's a little
9 bit narrower than to call it just human capital, but
10 it's the idea that there are -- investments made in
11 people is pretty central to some of the aspects of
12 labor economics, yeah.

13 Q As a matter of economics, is it correct
14 that some people might accept something for free that
15 they would not pay for if they had to?

16 A I'm sure, yeah.

17 Q People accept giveaways at baseball
18 games even though they might not pay for them,
19 products they'd get if they had to?

20 A I'm sure, yes. I don't know about
21 baseball games, but people do take giveaways.
22 Christmas presents, for example.

23 Q Well, some people might accept a dinner
24 that cost \$500 if it was given to them even if they
25 couldn't afford it, right?

1 A They might, sure.

2 Q Does an economist define the value of a
3 product or a service as the amount that the buyer
4 would be willing to pay for it?

5 A That -- the theory value does involve
6 that kind of issue, yes.

7 Q Well, is the value of a product or a
8 service the same in all cases as what a buyer would
9 be willing to pay for it?

10 A Well, this requires me to distinguish
11 between the market and the individual's preferences.

12 Q Right.

13 And the value that a particular buyer
14 gets from a product or service is not the same as the
15 market rate or value of that product or service,
16 right?

17 A It may not be.

18 Q And the market price of a product or
19 service is set by supply and demand from all buyers
20 and suppliers, right?

21 A Yes.

22 Q Is your analysis in this case measuring
23 Division I colleges' and universities' willingness to
24 pay for the class members' coaching?

25 A What we do is construct a method for

1 A You're averaging.

2 Well, all regressions are averages.

3 Q Right.

4 So, in your groups you're averaging
5 step-downs across a number of different sports,
6 right?

7 A We're estimating common coefficients
8 across some sports, yes.

9 It's not averaging, it's common
10 coefficients.

11 Q And that process of putting different
12 sports together in the same group could mask
13 variation between those sports, right?

14 A It's possible.

15 MR. RAPHAEL: We've been going about an
16 hour. Should we take a short break?

17 MR. STEWART: Yeah.

18 THE VIDEOGRAPHER: This concludes media
19 number one of the videotape deposition of Dr. Orley
20 Ashenfelter. The time is 10:05. We're off the
21 record.

22 (Brief recess taken.)

23 THE VIDEOGRAPHER: This begins media
24 number two of the videotape deposition of Dr. Orley
25 Ashenfelter. The time is 10:20. We're on the

1 objective is typically broader than just a measure of
2 some kind of monetary profit.

3 There are -- I should say, there are
4 some universities that are for-profit universities
5 and you would analyze them like you would any other
6 firm; others are not for-profit, and then other
7 issues become important.

8 Q Are you aware of any Division I college
9 or university that is for-profit?

10 A I don't know.

11 I don't think there are any.

12 What happened to Trump University?

13 Q And does the fact that Division I
14 colleges and universities are not for-profit affect
15 how economists would model how they make decisions?

16 A So it would affect -- it would affect,
17 yes, to some extent.

18 Q And do universities always increase
19 spending until the marginal cost of the spending
20 equals the marginal revenue?

21 A That is what would happen if you were in
22 a profit-maximizing enterprise, and I think it's
23 easier to characterize universities as the part that
24 is similar to the firm is the cost minimization, but
25 then -- in other words, firms that are profit

1 maximizers, we assume, are cost minimizers, but then
2 you have one further step, which is profit
3 maximization.

4 I think most people would think of
5 universities as being -- you can think of modeling
6 them as cost minimizers, but then when it came to the
7 next step of what their ultimate goal is, given that
8 they minimized costs, it wouldn't necessarily be
9 profits.

10 Q So a university will not always make an
11 expenditure that -- strike that.

12 A university will not always spend money
13 anytime the marginal revenue from that expenditure is
14 more than the cost, right?

15 A If they're not profit maximizers, they
16 don't do that, right? So that is basically the
17 definition of what a profit maximizer firm is, they
18 expand to the point where market revenues are equal
19 to costs.

20 Q And a college or university wouldn't
21 necessarily do that?

22 A Not necessarily, no.

23 Q Is it correct, as a matter of economics,
24 that the more compensation that is offered for labor,
25 the more workers will be interested in providing that

1 labor?

2 A Yeah, we generally assume that, other
3 things the same, higher wages would attract more
4 workers.

5 But it's important to say "other things
6 the same."

7 Q Is coaching for a more competitive
8 Division I program more attractive than coaching for
9 a less competitive program?

10 MR. STEWART: Object to the form.

11 A Is that a question?

12 Q Yes.

13 A I didn't hear the first part.

14 Q I'll ask it again, I'm sorry.

15 A Okay.

16 Q Is coaching for a more competitive
17 Division I program more attractive than coaching for
18 a less competitive one?

19 MR. STEWART: Object to the form of the
20 question, overbroad and speculative.

21 A Well, I don't know. It might be for
22 some people, maybe not for others.

23 Q Coaches' preferences on the type of
24 program they want to coach in differ from
25 coach-to-coach, fair to say?

1 A Probably, yeah.

2 Well, the ones I know anyway.

3 Q As an economist, would it be your
4 expectation that some coaches who were paid to be
5 assistant coaches in the actual world would have been
6 interested in applying for additional paid coach
7 positions at more competitive programs if those
8 positions existed?

9 MR. STEWART: Same objections.

10 A They might, sure.

11 Q Is it correct, as a matter of economics,
12 that the more compensation that is offered for labor
13 in general, the more skilled the workers will be who
14 are interested in that position?

15 A No, that's not the way we normally think
16 about it.

17 Q Can -- can you explain why not?

18 A Well, the higher the pay, the more
19 anybody would prefer that job, other things the same,
20 regardless of their skill.

21 Q Is it possible that increasing
22 compensation to a particular level would make people
23 with certain skills interested in that position who
24 wouldn't be interested in it at a lower salary?

25 MR. STEWART: Excuse me.

1 employer, if they pay -- if they set a salary level
2 at -- for one job that's twice the other job, that
3 they wouldn't expect the person who worked in the job
4 getting twice as much to be more skilled?

5 A Well, if they set the pay higher, they
6 could insist on higher skills, yes, but it would
7 still be the case that every worker, regardless of
8 skill, would prefer higher pay.

9 You have to distinguish between the
10 preferences of the employer and the employee.

11 Q Understood.

12 I guess what I'm asking is, that if
13 the -- if the employer is going to pay \$150,000 to
14 the employee, they're going to want to get at least
15 \$150,000 in value or revenue from that employee,
16 right?

17 A That's right.

18 Q And if the employer is paying only
19 \$75,000, they would demand that the worker provide
20 only -- at least 75,000 in value, right?

21 A Yes.

22 Q So the more that an employer pays, the
23 more value that they're going to demand from the
24 person they're employing?

25 A Well -- yes, they need to always have --

1 that the benefits from the employment are bigger than
2 the costs, yes.

3 Q And so the more that employer pays, the
4 more benefit they would expect to get from the
5 employee they're paying?

6 A Yes.

7 Q Is there a concept in labor economics
8 called a formal or systemic pay structure?

9 A This actually is not so much in labor
10 economics, but the idea of pay structures is
11 certainly -- formal pay structures is a part of what
12 is normally thought of as human resource, the
13 economics of human resources. Essentially, human
14 resource analysis from the point of view of the firm.

15 Q And I use the term "formal" or "systemic
16 pay structure." Is that similar to the concept of a
17 rigid pay structure?

18 A There is some connection. I mean, the
19 idea is that most big companies, universities too,
20 have formal pay structures, they're not rigid really,
21 but they're formal.

22 Q Are you offering any opinion in this
23 case that there is a rigid pay structure for any
24 coach in any sport at any university?

25 A No.

1 Q What does it mean to formalize a model
2 in economics?

3 A Well, usually it means you write down
4 equations, which I tried to avoid here.

5 Q I think you mentioned that earlier.
6 Are you familiar with the concept of
7 sample selection bias?

8 A Yes.

9 Q What is that?

10 A Well, the famous example is the analysis
11 of the wage rates of married women, and the notion is
12 that if you wanted to measure the wage rate of
13 married women, if the wage itself determines whether
14 or not they work, then your sample is selected based
15 on the wage rate, and the sample is then not a sample
16 of the total population, but of the population that
17 has been selected.

18 There are many, many applications of it.
19 Just recently I saw one that had to do with land
20 prices. So, you know, we always think about land
21 prices as determining valuations of properties, but
22 of course not every property sells all the time. The
23 properties that do sell may not be representative of
24 the other properties in an area.

25 Q So am I right that the sample selection

1 bias problem arises where there is some difference
2 between the population reflected in the data that
3 you're looking at and the population that you're
4 trying to study?

5 A Yes.

6 That is actually a pretty good way to
7 put it.

8 I don't know who wrote that down for
9 you, but --

10 MR. STEWART: Don't flatter him, please.

11 Q Nobody.

12 My economist team is going to be through
13 the -- over the moon.

14 Is Jim Heckman one of the leading
15 scholars of sample selection bias?

16 A Yes.

17 Q Jim Heckman won the Nobel Prize in
18 economics in part for his work on addressing the
19 problem of sample bias?

20 A That is right, one of our fine
21 graduates.

22 Q And can you think of a paper regarding
23 sample selection bias that reflects an accepted
24 treatment of that issue?

25 A Well, his early paper on this topic

1 probably is -- is -- which was about married women in
2 the labor force is probably an example.

3 Q Is that his paper, "Sample Selection
4 Bias as a Specification Error"?

5 A I think that paper is a different one.
6 I think that paper is a more theoretical paper, but
7 I -- he wrote a lot of papers.

8 Q Heckman's paper, "Sample Selection Bias
9 as a Specification Error," that is a very famous
10 paper in labor economics, right?

11 A Yes.

12 Q And is it important in labor economic
13 analysis to avoid sample selection bias?

14 A Yes.

15 Well, it depends on what your problem
16 is. If -- if -- if the group that you have data on
17 is the group that you want to study, then there is
18 not an issue, but if the group that you're studying,
19 as you said earlier, does not represent completely
20 the group -- the population you're interested in,
21 then of course it's an issue.

22 Q And what can happen as a result of a
23 sample selection bias problem?

24 A Well, if you're estimating -- let's take
25 the sample of regression coefficients.

1 If you're estimating regression
2 coefficients, it could be that their estimates are --
3 are biased.

4 Q Have economists developed tools to
5 address sample selection bias?

6 A Yeah, Heckman, in fact, that paper you
7 mentioned, basically -- the clever aspect of it is
8 that specification bias is a kind of standard problem
9 in regression analysis, and fearing out that sample
10 selection could be thought of as the same thing, as
11 omitted variables. That is the clever part of what
12 he found, clever part of the paper.

13 Q And so following Heckman, the labor
14 economics field has developed tools to try to address
15 the problem of sample selection bias?

16 A Well, that is kind of an open question,
17 whether or not we've successfully developed tools.
18 In other words, there are tools, but it's kind of an
19 open question as to how successful they are. A lot
20 of people don't think they're very successful, which
21 has led to what is now more common, which is actually
22 field experiments.

23 So there are -- in order to avoid the
24 problem of selection bias, what you can do is
25 actually design an experiment in which you randomize

1 In other words, if you're thinking about jobs where
2 -- for example, I guess it's construction, where from
3 day-to-day you're not a hundred percent sure you can
4 work, that can affect the wage.

5 He has one, too, called "trust,"
6 where -- this is another idea that actually has been
7 elaborated on by others. The idea is that you pay a
8 premium, because if someone loses their job, so you
9 pay a premium to what they otherwise would get
10 because you want to have them be trustworthy, and the
11 idea is that if you catch them doing something that
12 when you fire them they can't get a job equal to the
13 one they already have, so that takes into account the
14 fact that they shouldn't steal from you, or whatever
15 it is.

16 There is ten of them. I have forgotten
17 all of them right now. We could dig it out.

18 Q Would a worker's experience affect their
19 earnings?

20 A Yes, could, definitely.

21 Q Would a worker's tenure at a particular
22 employer affect their earnings?

23 A It could also.

24 Q Could a worker's skill affect their
25 earnings?

1 A Yes.

2 Q Could a worker's specialization affect
3 their earnings?

4 A It could.

5 Q You mentioned human capital theory
6 earlier.

7 Is human capital theory standard in
8 labor economics?

9 A It's become just the norm, yeah, it's
10 one of the topics we always cover.

11 Q Have you taught human capital theory?

12 A Yes.

13 Q Have you applied human capital theory in
14 your own published work?

15 A Yes.

16 Q What are some of the foundational papers
17 in human capital theory?

18 A Well, I like to think that the most
19 important one is by Jacob Mincer, but there is a
20 famous one by Gary Becker too.

21 Q Is that --

22 A Mincer is "Income Earnings and" -- I
23 think it's called "Income Earnings and Ability," a
24 very famous book.

25 Q And Jacob Mincer also wrote a famous

1 paper called "Family Investments in Human Capital"?

2 A I think he has, yes.

3 Q And that established something called
4 the Mincer earnings function?

5 A Well, the Mincer earnings function was
6 in that little book I mentioned, that is where it
7 really comes from. I think it's called "Income
8 Earning and Ability," but I'm not exactly sure of the
9 title. It's a little book.

10 Q For the court reporter's benefit, Mincer
11 is M-I-N-C-E-R, correct?

12 A Yes.

13 Q And the Mincer earnings function is one
14 of the most famous functions in modern economics?

15 A In economics, actually.

16 Q And Mincer's work revolutionized labor
17 economics?

18 A I wouldn't say he did it all by himself,
19 there were lots of other people, but he certainly was
20 a pioneer early. He did work, I think, on
21 determinants of workers' earnings very early.

22 Q And the Mincer earnings function has
23 been used in hundreds of studies in economics?

24 A Maybe thousands.

25 Q And you have used the Mincer earnings

1 function in your own published work?

2 A Yes.

3 Q What are the inputs to earnings
4 according to the Mincer human capital function?

5 A Well, his -- the two -- there have been
6 things added to this, but the two kind of starting
7 points are schooling, now there's all kind of issues
8 about how you measure that, and experience, also
9 issues about how to measure that.

10 Q And would you agree that standard human
11 capital theory links an individual's earnings to
12 their level of education, job experience, and
13 industry experience?

14 A Certainly to their -- to their --
15 somehow measure of their skills, which is often taken
16 as measured by schooling, and certainly different
17 aspects of experience could matter, yeah.

18 It just depends. Some aspects of
19 experience are more important than others.

20 Q And it's standard in labor economics
21 that an individual's earnings will depend on their
22 skills and their experience?

23 A Yes.

24 Among other things. That is not all.
25 Among other things.

1 Q And it's well-known among economists
2 that age has an independent effect on worker
3 earnings, right?

4 A Well, that is debatable. A lot of
5 people think that the effect of age is the same as
6 experience. Often it's not possible to measure the
7 two separately.

8 So in Mincer's early work, in fact, he
9 measured experience by using age minus school, minus
10 school leaving date, but sometimes you can measure
11 experience directly, and sometimes you can measure
12 experience in different -- in different occupations
13 or different companies differently, it just depends
14 what you could measure.

15 Q But it's common for economists to
16 measure how age affects earnings as a way of trying
17 to estimate how experience affects earnings?

18 A That is usually thought of as a proxy
19 for that, yes.

20 Q And that is because workers develop
21 experience in human capital over time?

22 A Yes, because normally experience, as you
23 get older, you hopefully have more experience.
24 Sometimes that is not true because some people get
25 older and drop out of the workforce and they don't

1 have more experience, so that's why it's -- you know,
2 ideally you want to measure experience rather than
3 age, and it's debatable whether or not age has an
4 independent effect on pay.

5 There aren't very many data sets where
6 you could measure both of those well.

7 Q And age and previous earnings are good
8 summary measures of a worker's cumulative experience?

9 A Well, that would be very indirect, that
10 is not the Mincer analysis.

11 The Mincer analysis relies on measures
12 of skills, normally proxied by schooling, and some
13 kind of measure of experience and perhaps experience
14 at the current employer.

15 MR. STEWART: Could I hear that question
16 again?

17 MR. RAPHAEL: Sure.

18 (Whereupon, the requested portion is
19 read back by the reporter.)

20 MR. STEWART: Thank you.

21 A And I said, basically, no.

22 MR. STEWART: That was a professorial
23 no.

24 Q You wrote a paper published in 1978
25 called "Estimating the Effect of Training Programs on

1 Earnings"?

2 A Yes.

3 MR. RAPHAEL: Let's mark this as 70.

4 (Whereupon Estimating the Effect of
5 Training Programs on Earnings Article is received and
6 marked as Exhibit 70 for identification.)

7 A This is why a lot of people think
8 differences was invented. At least I think it was.

9 Q All right. So Exhibit 70 is an article
10 that you wrote called "Estimating the Effect of
11 Training Programs on Earnings," correct?

12 A Yes.

13 Q And what journal was this published in?

14 A It's in The Review of Economics and
15 Statistics.

16 Does it say on the bottom? I'm not
17 sure.

18 Q So if you could go to page 49 of this
19 article.

20 A Oh, it's on the top.

21 Q Do you see in the column on the left in
22 the second paragraph, you say, "At the most
23 rudimentary level, surely any theory of the
24 determination of earnings will imply that current
25 earnings are the result of a variety of historical

1 factors, such as education, experience, social class
2 and others that influence earnings capacity."

3 Do you see that?

4 A Uh-huh.

5 Q And that is correct as a statement of
6 economics?

7 A I think so, yes.

8 Q And the next sentence says, "Moreover,
9 good summary measures of this cumulative experience
10 for a worker are surely his age and previous
11 earnings."

12 Do you see that?

13 A Yes.

14 Q And that is correct as a statement of
15 economics?

16 A I think it's -- it's a good way to
17 summarize what was useful in this context, yes.

18 Q You can put that aside.

19 You testified as an expert in
20 discrimination cases?

21 A I have.

22 Q And as an expert in discrimination cases
23 you've conducted an analysis of how workers' race or
24 gender affected their earnings, right?

25 A Yes.

1 Q And in analyzing how workers' race or
2 gender affected their earnings you controlled for
3 factors such as the worker's experience or age,
4 right?

5 A Yes.

6 Q How does an economist define the but-for
7 world in an antitrust case?

8 A Well, it's the -- what would have
9 occurred in the absence of the alleged behavior.

10 Q Let me just go back and ask you: In the
11 discrimination cases where you controlled for factors
12 such as workers' age and experience, why did you do
13 that?

14 A The reason for control variables is to
15 make sure that what you're -- in the context of race
16 or gender differences, the goal is to measure what
17 the differences are that are not accounted for by
18 characteristics that are established prior to
19 entering the labor market.

20 Q So you -- you -- the goal was, where
21 you're trying to measure the effect of a certain
22 behavior on earnings, you were trying to ensure that
23 you weren't just measuring the effect of the worker's
24 skills or experience on their earnings, right?

25 A Yes, the issue -- if skill -- if age or

1 schooling level or whatever are correlated with
2 gender or whatever thing you're trying to measure,
3 then you need to control for them.

4 The general view is that you control for
5 the things that people bring to the labor market, not
6 the things that they -- that are a result of the
7 discrimination in the first place.

8 Q Incentives are very important in
9 economics. Would you agree with that?

10 A Yes.

11 Q And should an economist modeling the
12 but-for world assume that all of the participants in
13 the market would act in accordance with their
14 economic incentives?

15 A Generally, I would -- I would say that
16 is the common way to do it, although there are --
17 that is challenged now in many places, called
18 behavior economics.

19 Q Did you apply behavioral economics in
20 your work in this case?

21 A No.

22 Q Should an economist modeling the but-for
23 world account for how competition would have
24 increased without the challenged restraint?

25 A Well, I think that is the purpose of

1 most analyses, yes.

2 Q In modeling the but-for world in this
3 case have you assumed that coaches who worked as
4 volunteers would have negotiated their salaries?

5 A I haven't said how their salaries would
6 be set, just that there would be a normal market
7 price, a relative wage that would be appropriate to
8 them. How that got arrived at, I haven't really
9 specified in the report.

10 Q So you haven't made an assumption, one
11 way or the other, about whether in the but-for world
12 coaches would have negotiated their salaries?

13 A I didn't -- I didn't -- I didn't really
14 analyze how they would determine their salaries, just
15 to estimate what I thought the result would be.

16 Q In modeling the but-for world in this
17 case have you assumed that the NCAA bylaws, as they
18 existed after July 1 of 2023, would have been in
19 place during the class period?

20 MR. STEWART: Object to form of the
21 question, overbroad.

22 A That is the goal, yes.

23 Q Have you made any assumption in modeling
24 the but-for world in this case about when the bylaws
25 regarding limits on the number of paid coaches that

1 exist today would have gone into effect?

2 A Well, I guess it depends on what you
3 mean by "go into effect."

4 In the analysis we've used the post --
5 the period when the rules were changed to get at the
6 but-for world, but I think I did say in the report in
7 many places that it's not entirely clear that at the
8 point that we collected our data that the markets
9 were -- that the positions and markets were fully
10 reflective of what would happen absent the -- absent
11 the rules.

12 Q I think I'm asking a slightly different
13 question.

14 So when in your -- in the but-for world
15 that you have modeled would the NCAA bylaws regarding
16 limits on the number of paid coaches that exist today
17 have gone into effect at the start of the class
18 period or sometime before that?

19 A Oh.

20 I think -- the only analysis I have done
21 is of the class period, as far as I -- that is the
22 best I could recall.

23 Q Okay.

24 You have not assumed that in the but-for
25 world that you have modeled that the NCAA bylaws that

1 exist today regarding the number of paid coaches on a
2 team would have gone into effect at any time prior to
3 the class period?

4 A I don't think that's an assumption I
5 made, no.

6 Q In modeling the but-for world in this
7 case you have assumed that there would be limits on
8 the number of paid coaches that Division I schools
9 could have hired in each sport, correct?

10 A Yes.

11 Q And, in your view, is there anything
12 anticompetitive about NCAA bylaws limiting the number
13 of paid coaches on a team in each sport?

14 MR. STEWART: Again, I'm going to
15 object. You're going beyond what's in his report,
16 the opinions in his report, and you're asking for
17 generalized opinions on something else, where the
18 report clearly says that -- well, go ahead, I'm going
19 to object that, again, you're going beyond the scope.

20 A Actually, he said it for me.

21 I was asked to assume that the -- that
22 the number of coaching slots was determined by the
23 NCAA rules and not to ask what would happen if they
24 weren't. So that goes beyond the -- as Dennis said,
25 that goes beyond the scope of my report, I wasn't

1 asked to have an opinion about that question.

2 Q Are you offering any opinion that the
3 limit of -- on the number of paid coaches in each
4 sport that you have assumed would have existed in the
5 but-for world was anticompetitive?

6 A No.

7 Q So the but-for world that you've modeled
8 in this case is one where there is a maximum number
9 of transactions that could have taken place for
10 hiring coaches in Division I, right?

11 A Yes.

12 Q And that maximum number of coaches who
13 could have been hired in Division I in the but-for
14 world that you modeled could be lower than the
15 equilibrium number of coaches in a completely
16 unfettered market, right?

17 A Or higher, that is possible, sure.

18 Q Now, in cases involving fixing the price
19 of consumer products would an economist model the
20 but-for world where the number of transactions is
21 capped?

22 A I don't think the number of transactions
23 would really play a role in -- in -- in a typical
24 consumer behavior case.

25 Q In any other case that you have worked

1 on has the number of transactions in the market in
2 the but-for world been capped?

3 A I don't think so.

4 Q Are you offering any opinion on what
5 percentage of the athletics budget any Division I
6 college or university would have needed to pay the
7 salaries that you estimate would have been paid in
8 the but-for world?

9 A No, I haven't tried to calculate any
10 such thing.

11 Q Do you think you could have calculated
12 that?

13 A I don't know, it would depend on what
14 assumptions you wanted to make.

15 I don't know, it's possible, but I don't
16 know.

17 Q Are you offering any opinion on the
18 amount of revenue that any athletics department in
19 Division I would have earned in the but-for world?

20 A No.

21 Q Are you assuming that every athletics
22 department in Division I would have earned the same
23 amount of revenue in the but-for world?

24 A No, I haven't made any assumption about
25 revenue.

1 paid coach in every sport where they hired a
2 volunteer in the actual world, correct?

3 MR. STEWART: Objection to the form.

4 A Oh, no, I said most I predict -- I state
5 very explicitly in the report that I think that most
6 would have, yes.

7 Q But most is not all, correct, sir?

8 A Most is not all, that's true.

9 Q Right.

10 So is it your opinion that all
11 Division I schools would have hired an additional
12 paid coach in every sport where they hired a
13 volunteer in the actual world?

14 A I think I said most, not necessarily
15 all.

16 MR. STEWART: Excuse me.

17 I missed an opportunity to pose an
18 objection both with respect to the incompleteness of
19 the hypothetical and the irrelevance of the question
20 based on rulings in the case.

21 Q Because it is not your opinion -- well,
22 strike that.

23 You agree that some Division I schools
24 would not have hired an additional paid coach in some
25 sports where they hired a volunteer in the actual

1 world, correct?

2 MR. STEWART: Same objections. We
3 already have a ruling on this.

4 A I think I said most would, that is what
5 my opinion is, based on -- and I state in the report
6 why that is.

7 Q And some schools would not have hired
8 additional paid coaches in all sports where they
9 hired a volunteer, right?

10 A It's possible, but as I state, my
11 statement was that most do, would.

12 MR. STEWART: Again, just interpose,
13 because I didn't get a chance, the same objections.

14 Q And "most" does not mean "all," correct?

15 A Yes, that's true.

16 Q Can you think of any reason why
17 volunteer coaches who were members of the class could
18 have been better off in the actual world than they
19 would have been in the world where the current NCAA
20 bylaws were in place?

21 MR. STEWART: Object to the form of the
22 question, vague.

23 A I am having a hard -- could you repeat
24 that?

25 Maybe -- there seems to be three

1 Q I understand it as slightly different,
2 but I would appreciate your answer.

3 MR. STEWART: Okay, same objections.
4 Go ahead.

5 A What I said was that I think most would
6 have been hired, but not necessarily every single
7 one.

8 Q You teach at Princeton. Did you
9 investigate anything about volunteer coaches at
10 Princeton?

11 A No, no, I didn't.

12 Q So you didn't investigate whether
13 Princeton hired additional paid coaches in all sports
14 where it hired volunteers?

15 A No, I didn't.

16 Q Did you know that Princeton designated
17 additional paid coaches that it hired after the
18 bylaws were changed as casual assistant coaches?

19 A No.

20 Q Can you explain to me how any Division I
21 college or university funds its athletic department?

22 A I couldn't quite hear the last part of
23 your sentence.

24 Q Can you explain to me how any Division I
25 college or university funds its athletic department?

1 A Oh.

2 Well, as I said, I haven't been involved
3 in athletic departments, so I'm not -- I have no idea
4 exactly how they do it.

5 I know they have -- there is an
6 elaborate aspect of recruiting student athletes as
7 well as coaching staff as well as amenities for the
8 students in some ways to help them, so I have a vague
9 understanding of how athletic activity operates at
10 the university, but I have never been involved in the
11 administration of the athletic department.

12 Q So you can't tell me how Princeton or
13 any other college or university funds its athletic
14 department?

15 A Well, I assume that there is various
16 forms of funding, everything from gifts to general
17 revenues to actually even ticket sales, of which we
18 have some.

19 Q But you couldn't explain to me how any
20 particular college or university funds its athletic
21 department?

22 A No. Other than the general
23 understanding of where their revenues must come from,
24 I don't have the detailed analysis.

25 Q And different colleges and universities

1 fund their athletic departments in different ways,
2 right?

3 MR. STEWART: Object to the form of the
4 question. He just told you he doesn't know, but go
5 ahead.

6 A I don't know, but I'm sure that there
7 are some differences, yes.

8 Q Do you know whether some Division I
9 colleges and universities fund their athletic
10 departments through taxpayer funds?

11 A Oh, I don't know.

12 Q Do you know whether colleges and
13 universities fund their athletic departments through
14 revenues earned by the department?

15 A Well, I'm sure some do.

16 By the way, even including the taxpayer
17 funds, it's become an issue in New Jersey with
18 Rutgers.

19 I'm sure there are some, but I have no
20 detailed analysis, no detailed knowledge about that.

21 Q Do you know whether or not any colleges
22 or universities require approval from the state
23 government to hire personnel?

24 A I don't know.

25 Q So you didn't investigate how any

1 Division I college or university funds its athletic
2 department?

3 A That's right.

4 Q Why not?

5 MR. STEWART: Well, no.

6 Come on, Justin. Again, you're going
7 beyond -- you're getting into work he didn't do and
8 why he didn't do work, and the proper area of inquiry
9 for an expert is what he did do and what the basis
10 for his opinions are, what his opinions are, so I
11 think, again, you're in violation of Rule 26.

12 MR. RAPHAEL: I totally disagree. I
13 think what Professor Ashenfelter didn't do is
14 entirely relevant to the reliability of his opinions,
15 and so I would like an answer to my question.

16 Q Why did you not investigate whether --
17 how any Division I college or university funds its
18 athletic department?

19 A Well, that wasn't part of my -- of my --
20 what I was asked to do, it wasn't part of my mission.

21 Q Do you think funding for athletic
22 departments is relevant in any way to the opinions
23 that you've expressed in your report?

24 A Not directly relevant, no, I don't think
25 so.

1 Q Why not?

2 A Well, what I was asked to do was to try
3 to determine -- to find a method for determining what
4 the wage rate would be for coaches whose -- who were
5 classed as volunteers and to establish whether that
6 market wage was positive as well as whether or not I
7 thought that most of the former coaches would have
8 been paid.

9 So my -- my -- what I was asked to do
10 didn't involve -- no one asked me to try to figure
11 out how you would finance or not finance any of these
12 pay structures.

13 Q But is the amount of funding that
14 athletic departments had relevant to the market wage
15 that coaches would be paid by those colleges and
16 universities?

17 A I'm sure it would be, yes.

18 Q But you didn't think to look at that in
19 connection with your analysis of the market rate,
20 right?

21 A No.

22 The -- the market rate I determined by
23 using relative pay structures.

24 Q Did you investigate the impact, if any,
25 of Title IX or gender equity concerns on athletic

1 departments?

2 A No.

3 Q And so you didn't take that into account
4 in your analysis, correct?

5 A No.

6 We do distinguish between men's and
7 women's teams and coaches, but there's not -- not an
8 explicit analysis of anything associated with that.

9 Q Did you investigate the process that
10 Division -- any Division I college or university uses
11 to approve adding personnel?

12 A No.

13 Q And so you couldn't explain to me the
14 process that any Division I school uses to add paid
15 personnel, right?

16 A I have not investigated that question.

17 Q Did you investigate how any Division I
18 college or university determines how to allocate its
19 athletics budget?

20 A No.

21 Q So you can't explain to me the factors
22 or process that any Division I school uses to
23 determine how to allocate its athletics budget?

24 A I haven't studied the administration of
25 athletic departments anywhere.

1 Q You have not studied administration of
2 any Division I athletic department, correct?

3 A Yes.

4 Q Would it be your expectation that
5 different colleges and universities have different
6 priorities and processes for allocating their
7 athletic budget?

8 A Yes.

9 Q Would it be your expectation that
10 different Division I schools have different
11 constraints on their ability to add paid personnel?

12 A They may have, yes.

13 Q Did you investigate whether different
14 Division I colleges and universities prioritize
15 different sports?

16 A I did not study that question, no.

17 Q And so you don't know whether any
18 Division I school prioritizes any sport more than any
19 other Division I school, right?

20 A Well, that is going a little too far.

21 Q All right.

22 Maybe we'll get a little more specific
23 then.

24 You don't know whether the United States
25 Naval Academy or Fresno State University values

1 women's volleyball more than their other sports,
2 right?

3 A Correct.

4 Q And the reason you don't know that is
5 because to understand that you would have to ask the
6 Naval Academy and Fresno State, right?

7 MR. STEWART: Object to the form.

8 A I have to analyze, yes, you have to find
9 some way to analyze. I don't know if you have to ask
10 them, but you have to find some way to analyze what
11 their interests are.

12 Q Would it be your expectation that if
13 different colleges and universities prioritize
14 different sports, that that could affect their budget
15 allocations?

16 A I'm sure it could, yes.

17 Q As an economist, could you think of any
18 way to determine how different colleges and
19 universities would allocate their athletic budgets in
20 the but-for world?

21 A Well, I think I explained it. I haven't
22 done any study of the way that athletic departments
23 are administered, and other than general knowledge
24 about revenue sources that I think almost everybody
25 would associate with the university, I don't have any

1 When you say "most of them would have
2 hired someone," are you saying that most of the
3 schools would have added a paid position in all of
4 the sports where they used a volunteer without saying
5 anything about who would have gotten that position?

6 MR. STEWART: Again, I'm going to
7 incorporate my prior objections.

8 A Right, I'm not trying to say who they
9 would hire, but, yes, they -- they -- I believe they
10 would have hired -- most of them would have hired
11 someone in that position.

12 I'm sorry, paid someone in that position
13 I guess is a better way to say it.

14 Q Right.

15 And then just to make sure we're clear,
16 so your opinion is that most but not all of the
17 Division I schools would have hired someone with pay
18 for the position that they hired volunteers for,
19 right?

20 A Yes.

21 MR. STEWART: Same objections. Excuse
22 me.

23 A Yes, that is right.

24 Q And just to make sure we're clear again,
25 have you offered the opinion that most of the schools

1 that would have hired someone with pay, are you
2 offering the opinion that all of the people who would
3 have been hired for those paid positions would have
4 been the same people who were the volunteers in those
5 positions?

6 MR. STEWART: Excuse me.

7 Object to the form of the question, and
8 that the question is legally irrelevant.

9 A Well, it's not -- I don't know who they
10 would actually hire into those positions.

11 Q Can you explain to me the skills or
12 attributes that any Division I -- well, let me back
13 up on that.

14 You're not offering an opinion on the
15 identity of the coach who would have been hired for
16 any particular paid position in the but-for world?

17 MR. STEWART: Object to the form of the
18 question and -- and incorporating my prior objections
19 on relevance.

20 THE WITNESS: You want me to answer
21 that?

22 MR. STEWART: Sure.

23 THE WITNESS: Okay.

24 A I have assumed that the -- well, the
25 people that were injured by the collusion were the

1 about what future hiring there is.

2 So the but-for world is a made-up world
3 in the sense that it's what we think would have
4 occurred absent the collusion, and that is what I
5 have assumed for that, which is that those people,
6 most, would have been in positions that were paid, or
7 I have shown that, more or less. At least I made
8 several arguments to try and make that clear.

9 Q Have you investigated the skills or
10 attributes that any Division I head coach during the
11 class period believed were most important for
12 assistant coaches on their staff?

13 A No.

14 Q Would it be your expectation that some
15 head coaches would value different skills or
16 attributes differently in the assistants they hire?

17 A I imagine they might.

18 Q And would it be your expectation that
19 some head coaches might value experience playing the
20 sport more than experience coaching the sport?

21 A It's possible, I suppose. I don't know.

22 Q And some coaches might value coaching
23 experience more than playing experience, right?

24 A That's possible. I don't know.

25 Q So you can't -- you can't explain the

1 MR. STEWART: I am not.

2 A Okay, what was the question, remind me?

3 Q The question was, did you notice in
4 Dr. Rascher's report that he has a model for
5 predicting whether a Division I baseball program
6 would have added an additional paid assistant coach
7 position in the but-for world?

8 A I know he -- I'm not sure if that is
9 what he did, but I know he had a probit analysis to
10 try to predict hiring, but that is all I -- that is
11 what I took away from that and that is it. I'm not
12 sure exactly how he used it.

13 Q Does your -- does the model you built in
14 this case predict whether a college or a university
15 would have hired an additional -- strike that.

16 Does the model that you have put forward
17 in this case predict whether a Division I college or
18 university would have added an additional paid
19 position in the but-for world?

20 A No, the model doesn't do that, no.

21 The regression model doesn't do that.

22 Q Does any model you've done in this case
23 do that?

24 A Yes. I've argued that all the evidence
25 is that most of the -- of the -- of the positions

1 A Well, you may recall in a little earlier
2 discussion we -- we have some folks for whom we've
3 calculated that they wouldn't have been paid, so
4 that's -- that's not quite right to say that it
5 doesn't predict anything, but it does -- it is
6 designed -- it's not designed to predict that.

7 Q Right.

8 A But to the extent that the relative
9 wages are such that the appropriate assistant coach,
10 for comparison, doesn't get paid, then we assume that
11 that person wouldn't be paid.

12 Q Your step-down model is not designed to
13 predict whether any Division I school would have
14 added a paid position to their personnel roster in
15 the but-for world, correct?

16 A Yes.

17 MR. STEWART: Justin, when you get a
18 point, we've been -- we had kind of an early start, I
19 think probably lunch break at a convenient spot would
20 make sense.

21 MR. RAPHAEL: Sure.

22 Maybe we could -- maybe, like, ten
23 minutes.

24 MR. STEWART: Sure.

25 Is that okay with you, Doctor?

1 that point.

2 Q Do you have an estimate of how long it
3 will take for the market to adjust to an equilibrium?

4 A I don't actually try to estimate what
5 that would be.

6 I don't -- I don't know.

7 That is a good question, how long it
8 would take. I don't know the answer to that, but I
9 don't think it would happen immediately.

10 Q Just a few more questions and then we'll
11 take a break.

12 So after July 1, 2023, when the amended
13 bylaws went into effect, most Division I colleges and
14 universities did not hire an additional paid coach in
15 most sports where they had hired volunteers, right?

16 A I think that's right, yes.

17 Q Of all the Division I sports programs in
18 which --

19 A Well, maybe most is not right, but
20 certainly majority didn't.

21 MR. STEWART: I'm going to object to the
22 form of the question, it's incomplete and vague.

23 Q So after July 1, 2023, when the bylaws
24 were amended, most Division I -- that is exactly what
25 I meant not to do.

1 After July 1, 2023, when the amended
2 bylaws went into effect, the majority of sports
3 programs in Division I that hired a volunteer during
4 the class period did not hire an additional paid
5 coach, right?

6 A I think that's true, yes.

7 MR. STEWART: Objection.

8 Q Of all the Division I sports programs in
9 which a college or university hired a volunteer coach
10 during the class period, what percentage of those
11 programs hired an additional paid coach after the
12 bylaws were amended?

13 MR. STEWART: Object to the form of the
14 question.

15 A That is a knowable question, but I don't
16 actually have it in front of me, or here, unless
17 it's -- I don't think it's in the report, actually,
18 but there are some numbers that would lead you in
19 that direction in the report itself. I don't think
20 we actually calculate that number.

21 Q In other words, you could calculate that
22 percentage, but you didn't do that in the report?

23 A I don't think that number is in the
24 report, but you can certainly do that from the data
25 we have.

1 Q Now, are those reasons affirmative
2 evidence that all colleges and universities in
3 Division I would have paid additional coaches in
4 every sport during the class period?

5 MR. STEWART: Object to the form of the
6 question, vague.

7 A Well, they're offered not for that
8 purpose, they're offered for the purpose of
9 explaining why -- to try to explain why you might see
10 like adjustment.

11 Q So the reasons that you mentioned about
12 why schools didn't hire -- the reasons you mentioned
13 why schools might not have hired additional coaches
14 in every sport after the bylaws were amended are
15 explanations for the data that you see after the
16 bylaws were amended?

17 MR. STEWART: Object to the form of the
18 question.

19 A Yes.

20 Q Now, is it your testimony that the three
21 reasons you identified why some programs may not have
22 hired additional paid coaches after the bylaws were
23 amended explain why every program that didn't hire an
24 additional paid coach made that decision?

25 A No, and I don't think these -- these

1 reasons are -- are the only reasons why -- there may
2 be other reasons too -- why adjustment is slow.

3 Q Well, I guess, can you think of any
4 reason why a school may not have hired an additional
5 paid coach after the bylaws were amended that is not
6 a reason why adjustment was slow?

7 A Well, I mean, there are all kind of
8 possibilities. A sport could get dropped. A school
9 could pull out of the NCAA. These all happened. Not
10 necessarily this time period.

11 Those are all reasons why the slow
12 adjustment might be different from what you'd expect
13 employment to be in the -- in the -- the absence of
14 the alleged collusion.

15 Q I guess what I'm asking is, does slow
16 adjustment explain why every school that did not hire
17 a paid coach in a particular sport after the bylaws
18 were amended made that decision?

19 A Well, I think I said I don't think those
20 are the only reasons, there may be others.

21 Q So other than slow adjustment, what
22 could explain why some schools did not hire
23 additional paid coaches after the bylaws were
24 amended?

25 MR. STEWART: Objection, asked and he

1 just answered.

2 A Well, I guess the problem with the
3 question is how many are not -- we don't know yet at
4 this point how many schools haven't hired paid
5 coaches into those long-term positions, so maybe they
6 will all hire them.

7 Q And maybe they won't, right?

8 A Well, we have no way of knowing for
9 sure, but it seems likely there will be many more
10 hired than had been in the initial period, and that's
11 really what I -- what I refer to with these reasons.

12 Q So is it your expectation as an
13 economist that -- well, let me strike that.

14 I think you said earlier you don't have
15 any estimate of how long it will be until the market
16 reaches equilibrium, right?

17 A That is correct.

18 Q And is it your prediction as an
19 economist that when the market does reach equilibrium
20 that every school that hired a volunteer in the
21 actual world will hire an additional coach in that
22 sport?

23 A I don't know.

24 Q You're not offering any opinion on that
25 subject, correct?

1 A That is not what my report is about, no.

2 Q Right.

3 So you're not offering any opinion about
4 whether when the market is in equilibrium every
5 Division I program hires an additional paid coach in
6 every sport where it hired a volunteer, right?

7 A No, that is not what I was asked to
8 analyze, and I haven't.

9 Q And so you have no opinion on that,
10 right?

11 A I have not reached an opinion on that,
12 yes.

13 The data are out, or the data are still
14 out, I guess you might say.

15 Q Well, you haven't reached an opinion on
16 that, though, based even on other types of economic
17 evidence, right?

18 You don't have any opinion on that, one
19 way or the other?

20 MR. STEWART: Excuse me.

21 What is that again?

22 Q Well, you said the data are out, and I'm
23 asking you, do you have an opinion, based on any type
24 of economic evidence whatsoever, about when the
25 market reaches equilibrium, whether that equilibrium

1 is one where every school that hired a volunteer
2 during the class period hires an additional paid
3 coach in that sport?

4 A I don't know whether that will be the
5 case, no.

6 Q And are you offering any opinion as to
7 why any particular Division I sports program didn't
8 hire an additional paid coach after the bylaws were
9 changed made that decision?

10 A No.

11 Q Did you investigate why any Division I
12 college or university that didn't hire an additional
13 paid coach after the bylaws were amended made that
14 decision?

15 A Well, we don't know what they -- what
16 decisions were made.

17 In other words, I think I tried to
18 explain carefully in the report that we don't -- we
19 don't -- our data doesn't continue into far enough to
20 know what the ultimate outcome will be. It will
21 certainly take another year, maybe many, many more.
22 So the -- one aspect of this is that we do not have
23 the data at this point to say what that outcome is
24 going to look like. Even with two years of data, it
25 would help.

1 hired a volunteer made that decision?

2 A Well, under pressure of time where there
3 were other things that needed to be done, it wasn't
4 something that was prioritized by anyone to do.

5 Q How much time do you think you would
6 have needed to do that?

7 MR. STEWART: Do what?

8 Objection, vague.

9 Q How much time do you think you would
10 have needed to figure out why each school that didn't
11 hire an additional paid coach in all of the sports
12 where it hired a volunteer during the class period,
13 why they made that decision?

14 MR. STEWART: Objection, vague and
15 ambiguous.

16 A It would be hard. You would obviously
17 have to depose people. So this is a legal question
18 that I really don't have the ability to answer.

19 Q So to figure out why a school did not --
20 made a decision not to hire an additional paid coach
21 in a particular program, you would have to depose
22 that school?

23 A Well, you would have to at least ask
24 people about this question, and probably it would
25 require, if you wanted to use it in court, that they

1 be deposed. Don't you think?

2 You're a lawyer, I'm not the lawyer
3 here.

4 Q You didn't -- you said that it's
5 premature to ask the question of why the schools
6 didn't hire paid coaches.

7 Why do you say that?

8 A Well, because I think what you want to
9 know is how many are not, in fact, going to do the
10 hiring, and there are many that we don't know whether
11 they did or didn't.

12 Q When you say you would want to know
13 whether they would do the hiring, do you mean when
14 the market reaches equilibrium or for '23-'24?

15 A No. I mean for -- when the market
16 reaches some equilibrium, what you would want to do
17 is to study -- you're the one who brought up sample
18 selection.

19 What you want to make sure to do is to
20 study a sample that wasn't selected of those -- of
21 those schools that are in these categories, so that
22 would require a sample design, which presumably would
23 be based on the equilibrium outcome.

24 Q Can you explain a little bit more what
25 you mean by "doing a proper sample design" in that

1 answer?

2 A Sure.

3 If you want to -- if there is a
4 population you would like to know the
5 characterization of, you typically draw a random
6 sample from that population and study it, and then
7 that way you know that you can infer what the
8 population looks like without -- without issues of
9 bias.

10 Q And that is a standard technique in
11 economics?

12 A Yes.

13 Well, it's a technique in all the
14 sciences basically, minimization. It goes back not a
15 long ways, but fairly far.

16 Q You didn't employ any randomized
17 sampling in this case, did you?

18 A No.

19 I guess I should say yes.

20 Q Let me ask it again for a clear record.
21 Did you employ any random sampling in
22 this case?

23 A No.

24 That is a correct no.

25 Q Why not?

1 A We -- we -- we were lucky to get the
2 data we got in the time we had it, so it wasn't -- we
3 were taking everything we could get our hands on
4 because of the -- of the slow production of data in
5 the first place.

6 Q Any other reason?

7 A That's the reason.

8 Q Did you do anything to construct a model
9 as to why each Division I college or university that
10 didn't hire an additional paid coach after the bylaws
11 were amended made that decision?

12 A As I explained, I didn't try to explain
13 that with a model.

14 Q I think one of the reasons you mentioned
15 that might explain why some schools did not hire an
16 additional paid coach after the bylaws were amended
17 is that wages don't adjust immediately, right?

18 A Yes.

19 Q And I think one concept you mentioned, I
20 think, is -- is downward nominal wage rigidity?

21 A Yes.

22 MR. RAPHAEL: I'll pause for the court
23 reporter on that one.

24 THE COURT REPORTER: I got it.

25 Q And that's -- that's the idea that

1 employers find it difficult to reduce the wages of
2 people that they're already earning?

3 A Yes.

4 Q And so your expectation would be that if
5 schools were paying the coaches who volunteered in
6 the but-for world that they wouldn't take the money
7 that they were paying the other coaches on their
8 staffs and give it to the volunteer coaches, right?

9 A Yes.

10 Q Do you have any opinion on, if schools
11 weren't going to get the money to pay the coaches who
12 you say would have been paid from salaries of other
13 coaches, where they were going to get the money?

14 A Well, you asked me earlier about the
15 sources of finances for these particular departments,
16 and I don't really know anything about the sources of
17 financing, so I really don't have a particular
18 opinion about where those funds might come from.

19 Q Are you offering an opinion that all
20 Division I schools that hired volunteers during the
21 class period could have afforded to hire additional
22 paid coaches in all the sports where they hired
23 volunteers?

24 MR. STEWART: Object to the form of the
25 question, vague.

1 A No, I didn't -- I didn't -- my report
2 doesn't deal with that topic.

3 Q You didn't perform any study to
4 determine whether downward nominal wage rigidity
5 explains why any school did not add additional paid
6 coaching positions after the bylaws were amended,
7 right?

8 A That is correct.

9 Q You're just pointing out nominal wage
10 rigidity as a theory that could explain that?

11 A As a general -- as kind of a general
12 finding, yes.

13 Q So you don't actually have the opinion
14 that downward nominal wage rigidity explains why any
15 school actually didn't hire additional paid coaches,
16 right?

17 A I don't know why they didn't, based on
18 that alone, no.

19 Q And another reason you said, I think,
20 that schools may not have hired additional paid
21 coaches is that adjusting university budgets takes
22 time, right?

23 A Yes.

24 Q And I think you testified earlier that
25 you haven't studied how any university sets its

1 athletic budget, right?

2 A No. I have some general idea, of
3 course, because I'm at a university, but I haven't
4 really -- haven't studied the administration of the
5 university budgets.

6 Q So you're not offering any opinion then
7 that the time it takes for universities to change
8 their budget actually explains why any school didn't
9 hire additional paid coaches after the bylaws were
10 amended?

11 A I don't have a direct connection between
12 that, just offering that as one of the things to
13 explore.

14 Q Now, I think the third reason you
15 mentioned as to why schools may not have hired
16 additional paid coaches has to do with residual
17 collusion?

18 A Yes.

19 Q Have you seen any evidence that any NCAA
20 member institutions colluded with respect to the
21 assistant coach salaries after the NCAA bylaws were
22 amended?

23 A No.

24 Q And are you offering the opinion that
25 any NCAA member institutions colluded regarding

1 coaching salaries after the amended bylaws were
2 changed?

3 A No.

4 Q Economists have performed studies about
5 this concept of residual collusion?

6 A There's some evidence, yes.

7 Q You didn't perform any study in this
8 case about whether this notion of residual collusion
9 explains why any school did not hire additional paid
10 coaches after the bylaws were amended?

11 A That's correct.

12 Q Are you aware of any published studies
13 showing that not all colleges and universities make
14 all of the payments that they are permitted to make
15 to student athletes under NCAA bylaws?

16 A I don't -- I don't know.

17 I read a bunch of different things, but
18 I don't recall anything in that particular area.

19 Q Could you go to paragraph 54 of your
20 report, please.

21 MR. STEWART: I don't think he has the
22 final report, does he?

23 Q No. This is your original report.

24 A Okay.

25 Q I don't believe this is a paragraph

1 So when you testified earlier that all
2 members of the class were harmed, that is your
3 opinion, correct?

4 A Yes.

5 Q What do you mean by that?

6 A I mean that if someone was hired, they
7 must have produced output at least equal to what they
8 were paid.

9 So that output -- so if you think about
10 the usual marginal product of labor equals the wage
11 rate, that output would normally be compensated.

12 It's in that sense that I meant, it's a
13 very special sense, but it's in that sense I meant
14 that they were harmed.

15 Q So, in other words, members -- when you
16 say "all class members have been harmed," what you're
17 saying is that the universities received more value
18 than they paid?

19 A Yes.

20 Q And so -- but some -- some coaches even
21 on that measure of harm were not entitled to damages
22 I think you said?

23 A Yes.

24 The convention we used was that if the
25 assistant coach wasn't -- I'm sorry.

1 substitution issue that the court has already ruled
2 in this case is not going to be applied, but you can
3 answer the question.

4 MR. RAPHAEL: You can have a standing
5 objection so we don't have any more speaking
6 objections.

7 Q Can you answer my question?

8 A All depends on what they have been paid.

9 Q Right, but economics would indicate that
10 the employer is going to hire the person for the
11 position with whom they get the biggest difference
12 between the marginal revenue and the marginal cost,
13 right?

14 A Yes, that's true.

15 Q And so it could be that if there were
16 other applicants for the positions that the volunteer
17 coaches held who offered more revenue -- marginal
18 revenue product than the marginal cost, their salary,
19 economics would say that the college would hire that
20 applicant rather than the volunteer?

21 A Well, in this situation that is probably
22 true.

23 In a -- if the number of coaches was
24 unrestricted, then it would be -- anytime there was a
25 marginal benefit greater than cost, you would hire

1 the person.

2 Q Right, but your but-for world, sir,
3 assumes that the number of coaches is restricted,
4 right?

5 A That is correct.

6 Q Okay. So in a but-for world in where
7 the number of coaches is restricted, economics would
8 say that if there is an applicant whose marginal
9 revenue product exceeded the salary that would have
10 to be paid by more than the value the school got from
11 the volunteer, they would hire that other applicant,
12 right?

13 A Yes.

14 MR. STEWART: Just to be clear, my
15 objections are continuing, right, Justin?

16 A Yes, you take the one that gives you the
17 most payoff.

18 MR. STEWART: Counsel, are my objections
19 continuing?

20 MR. RAPHAEL: Oh, yes, yes, absolutely.

21 MR. STEWART: Thank you.

22 MR. RAPHAEL: I'm very clear on what
23 your objection is.

24 MR. STEWART: Good. Thank you.

25 And I don't need to make it for every

1 question.

2 MR. RAPHAEL: Not at all. I don't
3 intend to suggest you waived that objection.

4 MR. STEWART: Okay, thank you.

5 Q What -- what, as an economist, do you
6 think some of the reasons might have been why a
7 Division I sports program wouldn't hire paid coaches
8 for all of the unrestricted positions?

9 MR. STEWART: I'm going to object. It's
10 beyond the scope of his report.

11 You can go ahead.

12 A Well, the general reason is the one you
13 just explained, which is that the marginal benefit
14 wasn't as much as the going rate for them.

15 Q You have some discussion in your report
16 of pay equity, right?

17 A Yes.

18 Q Did you perform any study of internal or
19 external pay equity in any sports program in
20 Division I?

21 A I guess it depends on what you mean by
22 "pay equity."

23 Q Let's get back to basics then.
24 What is the concept of pay equity?

25 A Well, the idea is -- is -- there's both

1 external and internal notions of -- of pay, and the
2 internal notion is that, as in typical institutional
3 pay structure, there's some comparison between people
4 at different pay levels. So the notion of -- the
5 basic idea is that there's a -- there's a wage
6 differential across some internal positions that
7 appears rationalized by -- typically, I think -- by
8 norms that are common in the -- in the institution.
9 And then external pay equity has to do with the same
10 comparison across institutions.

11 Q So, by way of example, internal pay
12 equity would be if there is an animation studio and
13 the company that has the animation studio has
14 different sort of formalized job levels inside their
15 company?

16 A Yeah, that is one example.
17 The government does it, too, with GS
18 levels.

19 Q Right.
20 And then external pay equity would be
21 that the people at the animation studio who have a
22 job at a different level, they look out there and
23 they say, "Why do the people at the other studio who
24 have whatever job I have, why do they make more than
25 me"?

1 A Yes.

2 And, effectively, that might mean that
3 you're going to lose some people.

4 So both internal and external pay equity
5 has a purpose.

6 Q Now, did you study internal or external
7 pay equity at any Division I athletics department?

8 MR. STEWART: Object to the form.

9 A No.

10 We did study relative wage
11 determination, and that is the basis for my -- for my
12 analysis of damages, but there wasn't -- I didn't
13 make any attempt to try and explain why those wage
14 differentials existed.

15 Q So you're not offering any opinion in
16 this case as to whether there is internal or external
17 pay equity at any Division I program or in any
18 sports?

19 A No, not with respect to any individual
20 program, that's correct.

21 Q Are you offering an opinion that there
22 is pay equity at any Division I school across their
23 sports programs?

24 A No.

25 I cite some anecdotal evidence that

1 demonstrates that issues of internal pay and external
2 pay equity have -- show up.

3 There certainly is evidence that they're
4 in the minds of some people, but I haven't done any
5 formal study of it.

6 Q Well, do you have an opinion as to
7 whether pay equity between coaches in the same sport
8 at the same school explains coach salaries at that
9 school?

10 A I haven't tried to explain the
11 differences in salaries. I mean, there are -- the
12 regression analysis gives us measures of the relative
13 wages of all the different coaches, but I haven't
14 tried to explain why or -- either across sports or
15 within sports why those differences, why they exist
16 and whether -- what they're a result of.

17 Q And so you're not offering the opinion
18 that differences in coach salaries, either across
19 sports or within the same sport, are a function of
20 pay equity?

21 A No, but they are a function -- they
22 exist, so they're undoubtedly a function of pay
23 structure which almost certainly has some components
24 that are associated with these issues.

25 Q What do you mean by "pay structure"?

1 A Just like it says. So we -- for
2 example, this so-called step-down we give is a
3 measure of the gap between the pay of the
4 unrestricted assistant coach and the newly-hired
5 formerly volunteer coach, so that's a pay
6 differential.

7 There's pay differentials -- they're
8 reported in the backup, they're not in the report,
9 but there are pay differentials between the head
10 coach and the other coaches, and we actually measure
11 what those are in the categories we set up.

12 Q But you're not offering any opinion that
13 the differentials in one sport between salaries for
14 different coaches in that sport are affected by the
15 differentials among salaries in another sport?

16 A No.

17 That is an analysis that could be done,
18 but I haven't done it.

19 I should have said yes, shouldn't I,
20 because you asked me, "That is an analysis you
21 didn't."

22 I wish you wouldn't do that.

23 Q Have you done any analysis of how the
24 salaries -- the differential between salaries for
25 coaches in one sport affects the differential of

1 salaries of coaches in another sport?

2 A No.

3 That's the way it should have been.

4 Q In your view, were the volunteer coach
5 rules consistent with the concept of pay equity?

6 MR. STEWART: Can I hear that again?
7 I'm sorry.

8 (Whereupon, the requested portion is
9 read back by the reporter.)

10 MR. STEWART: Object to the form of that
11 question, vague.

12 A I haven't thought about that.

13 That's an interesting question because
14 the end of the -- of the rule -- why did the rule
15 end, for example, you could ask. I haven't asked
16 that question either, but it's an interesting
17 question.

18 Actually, I guess there is a research
19 project on that, to tell you the truth.

20 I hate that phrase. I shouldn't have
21 said that. I always tell the truth.

22 I haven't thought about that. As I
23 said, maybe I will think about it now that you asked.

24 Q Just to be clear, I'm not funding the
25 research project.

1 Q Are you offering any opinion as to --
2 I'll break it down, maybe a little more
3 straightforward.

4 So the -- the coaches who volunteered in
5 the actual world, they faced some level of
6 competition, maybe a lot, maybe not so much, for
7 their positions, right?

8 A Yeah.

9 Q And are you assuming that that level of
10 competition that the volunteer coaches faced for
11 their positions in the actual world would have been
12 the same intensity of competition that they faced in
13 the but-for world?

14 MR. STEWART: Same standing objection.

15 A Well, I don't make any assumption about
16 what -- that kind of competition, right.

17 The kind of competition that we're
18 discussing here is the alleged collusion.

19 I don't have -- there is nothing in my
20 report that goes to the question of what -- who the
21 different applicants were for whatever the position
22 the unpaid coaches took when they did it. You know,
23 I don't have any -- I haven't decided that at all.

24 Q You have no opinion about the identity
25 of the applicants for the volunteer positions in the

1 actual world, right?

2 A Well, if you mean -- I'm assuming that
3 they -- the volunteer coaches that were in the
4 positions that they were in during the period of the
5 alleged collusion is the same as would have been
6 there had there not been collusion, I think I said
7 that about a hundred times.

8 MR. STEWART: I think the problem with
9 your question, Justin, is you're saying "identity of
10 the applicants."

11 Obviously one of the applicants, to the
12 extent there were more than one applicant in any
13 given case, is the coach who got the job, so it's
14 just a little ambiguous I think.

15 MR. RAPHAEL: I agree with you.

16 Let me try again.

17 Q You're not offering any opinion about
18 the identity of anyone who applied for or was
19 interested in a volunteer position who didn't get it,
20 right?

21 A Yeah, I am not.

22 Q And you're not offering an opinion about
23 the identity of anyone who would have been an
24 applicant for any of the paid positions you say would
25 have existed in the but-for world other than the

1 volunteers who were hired in the actual world?

2 A Yes, that's correct.

3 Q And, for that reason, you're not
4 offering any opinion about whether the competition
5 that the volunteers faced in the actual world was
6 more or less intense than the competition they would
7 have faced for their positions in the but-for world?

8 A Yes, that's right.

9 By "competition," you mean other
10 applicants I guess?

11 Q Right.

12 And, in fact, you're not offering any
13 opinion about the competition that coaches face
14 for -- to get their positions at all, right?

15 A No, I'm not -- other than the alleged
16 collusion, I'm not offering any opinion about
17 competition.

18 Q Would it be your expectation that more
19 coaches would have applied for paid positions in the
20 but-for world than applied for the volunteer
21 positions in the actual world?

22 MR. STEWART: Object, beyond the scope
23 of the report.

24 A Well, that's possible.

25 Q Do you have any opinion, one way or the

1 school that hired an additional paid coach would not
2 have hired the volunteer from the prior year even if
3 that volunteer applied?

4 MR. STEWART: I'm going to object, it
5 calls for speculation, but go ahead.

6 A I suppose it's possible. I don't know
7 what the reasons are of why that would occur, I
8 haven't -- I certainly haven't studied it.

9 Q So you -- as an economist, you cannot
10 think of any reason why a school that hired an
11 additional paid coach instead of an applicant who
12 previously was the volunteer would have made that
13 decision?

14 A Well, I think almost all of us can think
15 of some reasons why that might happen, but I haven't
16 studied any -- whether any of them are actually
17 relevant. For example, the head coach could change,
18 and then the head coach wants to change all the other
19 coaches. There is all kinds of possible ways that
20 that could occur, but I haven't really looked into
21 any of that.

22 Q Could one reason why a school that hired
23 an additional paid coach but didn't hire the
24 volunteer in the prior season when they applied be
25 that another applicant for the position was more

1 qualified?

2 A I suppose that's possible.

3 Q And you didn't investigate why any
4 Division I program that hired an additional paid
5 coach after the bylaws were amended decided to hire
6 one coach rather than another?

7 A No, I haven't -- I haven't studied that
8 question.

9 Q You haven't investigated the
10 qualifications of any coach compared to any other
11 coach in Division I, right?

12 A That's correct.

13 Q Is it possible that -- strike that.

14 As an economist, would it be your
15 expectation that some coaches would -- who would not
16 have been interested in a volunteer coach position
17 but would be interested in a paid coach position?

18 MR. STEWART: Again, I'm just going to
19 reassert my standing objection that you have given
20 me.

21 A That's possible.

22 Q And, as an economist, what would be some
23 of the economic reasons for that?

24 A Usually people prefer jobs that pay
25 more.

1 step-down, which is some number, it implies that
2 there is a negative differential, we apply that to
3 the -- the paid assistant coach at St. Mary's to get
4 the prediction of what you would get -- of what the
5 St. Mary's newly-hired formerly unpaid coach would
6 get.

7 Now, are you asking me whether that
8 number is different from the number that we would
9 predict for the USC coach?

10 I wasn't sure what your --

11 Q Let me try it again, and you're lucky I
12 didn't go to St. Mary's.

13 A I'm sure it's a nice school.

14 Q So I'm asking you to compare the but-for
15 world salary for the lowest-paid coach at USC and the
16 actual salary for the coach in the same sport at
17 St. Mary's.

18 MR. STEWART: I'm just going to object,
19 it's vague. There are obviously numerous salaries
20 that are being paid to the staff, so are you
21 referring to all the salaries paid to the staff or
22 the lowest one, or what are you referring to?

23 MR. RAPHAEL: I'll try again.

24 Maybe I'll just try to cut through it.

25 Q It's possible, isn't it, that at some

1 schools that pay their coaches a lot, your estimate
2 of the salary that would have been made by the person
3 who volunteered is more than some coaches who were
4 paid in the actual world in the same sport at other
5 schools made, right?

6 A It's possible.

7 Q Right.

8 And because, I think you testified
9 earlier, that people generally prefer to make more
10 money rather than less, right?

11 A Other things the same, don't forget that
12 part.

13 Q Right.

14 Other things the same, right?

15 Right?

16 A Yes.

17 Q Okay.

18 So it's possible, isn't it, as an
19 economist, you -- strike that.

20 As an economist, you might expect that
21 if the volunteer position at USC was paid at a higher
22 salary than the person at St. Mary's actually earned,
23 that that person might have been interested in that
24 position at USC instead of St. Mary's?

25 A Well, that's possible in the sense

1 anything is possible, but, you know, the -- you
2 haven't held things constant.

3 So working at St. Mary's is not the same
4 thing as working at USC, so you didn't hold other
5 things constant. You have to have all the
6 characteristics -- I mean, it might be, I suppose,
7 I'm a devout Catholic, I don't know where Moraga is,
8 USC is downtown, it's riddled with -- they paid a
9 billion point one dollars for a sexual harassment
10 suit and taxed the faculty by taking away the
11 pensions. That is not a good job. We consider that
12 a bad job in academia.

13 I even tried to encourage a lawsuit by
14 some of the faculty. They never did it.

15 So you're not really comparing -- that
16 is comparing apples -- you didn't hold everything
17 else constant when you made that comparison.

18 Q Okay. Holding everything else constant,
19 as an economist, you would expect that if someone
20 could earn more as the last paid volleyball coach at
21 one school, they would be more interested in that
22 position than being the second highest paid coach at
23 another school at a lower salary, right?

24 MR. STEWART: Objection, vague.

25 A Everything else the same, I think

1 everything else the same, and that's hard to say that
2 "everything else the same" in that case because
3 the -- it depends on whether the -- what you do in
4 each of those positions is exactly the same, but
5 assuming that it is, then yes, I think they would be
6 more -- they would prefer the higher salary.

7 Q Well, someone would only not prefer to
8 higher salary as the last paid coach at one school
9 compared to the second highest -- strike that.

10 In a world where someone's salary as the
11 last paid coach at one school would be higher than
12 their salary as the second paid coach at another
13 school, in order for them, as a matter of economics,
14 to take the lower paid position, there would have to
15 be other intangible benefits that were worth at least
16 as much to them as the difference in salary, right?

17 MR. STEWART: Object to the form.

18 A That makes sense, yes.

19 That is the other things constant
20 problem.

21 Q Right.

22 And you in this case have not studied
23 any of the intangible benefits of coaching at any
24 school versus any other in any sport, right?

25 A Well, I haven't studied the intangible

1 benefits, no, that's correct.

2 Q And so it would be your expectation,
3 though, as an economist, that at least some coaches
4 who could have made more in the last paid coaching
5 position that you say would have existed in the
6 but-for world would have been more interested in that
7 position than the jobs they actually had paid in the
8 real world, right?

9 MR. STEWART: Same objections.

10 A Well, I think that requires this
11 statement that other things have to be the same,
12 right, so that's -- that's an innocuous statement to
13 say that people would prefer more money to less. I
14 don't think that is objectionable to anybody,
15 actually, not even economists.

16 Q Could you go to page -- paragraph 54 of
17 your report. I believe that's page 29.

18 A Fifty-four, paragraph 54.

19 That is the one we were on before.

20 Twenty-nine, yes.

21 Q Maybe take a minute to review that and
22 give the court reporter a break.

23 A I think this is the one we went over
24 before, is that correct, am I wrong, or are we on
25 different pages here?

1 Q Same page.

2 MR. STEWART: It's the same paragraph,
3 if that is your question.

4 A Yeah, got it.

5 Q Do you see there that you write, "Absent
6 a conspiracy to suppress the compensation of these
7 workers to zero, the market rate would be greater
8 than zero."

9 Do you see that?

10 A Yes.

11 Q What do you mean by "market rate" in
12 that sentence?

13 A The market rate would be obviously
14 determined, in the broadest sense, by supply and
15 demand absent the conspiracy.

16 Q So the market rate is determined by
17 supply and demand throughout the entire market?

18 A Yes.

19 Q And in order to determine supply and
20 demand, do you have to know what the market is where
21 you are determining supply and demand?

22 A No.

23 Q So your testimony, as an economist, you
24 can determine supply and demand for a market that you
25 have not defined?

1 In other words, relative wages would be
2 stable if you compare -- well, if you really wanted
3 to find -- to predict the wage of an AI person, you
4 have to have some kind of a benchmark.

5 It's possible actually that wages would
6 all go up and down together, even including lawyers
7 and garbage men and everything else, but it wouldn't
8 help you to get at the actual -- what the actual wage
9 rate is, you need to have some person who has a
10 relative wage that's determined by the same factors
11 as determines the AI wage, that is the basic idea.

12 Q So in order to calculate a relative wage
13 rate that is accurate you think you need to use jobs
14 whose salaries are determined by the same factors?

15 A Yes.

16 Q Have you done any analysis as to whether
17 the jobs -- the salaries of jobs coaching different
18 sports are determined by the same factors?

19 A Well, yes and no.

20 The -- to some extent the analysis I
21 have done is a relative wage differences. So to the
22 extent the relative wage differences are stable
23 across the groups, they don't differ, that is what I
24 mean by that, across the different groups that I
25 analyzed, that tells us something about the same

1 Q And if those step-downs were not close,
2 what conclusion would you draw?

3 A That -- that there are some differences
4 in the supply and demand factors between the two sets
5 of categories, A and B.

6 Q I see.

7 And if you found that there were
8 different step-downs between salaries in -- from
9 sport-to-sport, would that tell you that there's
10 different supply and demand in different sports?

11 A Somewhat different, yeah.

12 Q Do you have any opinion as to whether
13 supply and demand for coaches in each Division I
14 sport is the same?

15 A Well, I haven't done that test, so I
16 haven't done the analysis of what would allow you to
17 say.

18 Q So you have no opinion?

19 A So I haven't really drawn -- I think
20 they're probably similar factors in supply and
21 demand, but I don't know that for a fact.

22 Q So do you have any opinion on whether
23 the supply and demand factors for each sport in
24 Division I are the same?

25 A I think they're probably similar, yes,

1 but, as I said, I haven't done any tests that would
2 determine that for sure.

3 Q And that's a test that you could have
4 done?

5 A It could be done. Well, at least across
6 the groups we had. If we had more data, we could do
7 it across sports too.

8 Q And if you found that the supply and
9 demand factors in different sports were different,
10 what implications would that have for the analysis
11 that you did?

12 A Well, it would mean that we would have
13 adjusted the analysis so that it predicts correctly.

14 In other words, that we would have taken
15 account of the fact that supply and demand factors
16 were different when we did our prediction of what the
17 damages would be.

18 In other words, if we -- that is why we
19 did it in the groups we did.

20 Remember, the way the damages are
21 calculated are by using the step-down applied to the
22 payroll of the lowest-paid assistant coach in
23 whatever place it is that we're looking at.

24 If it turns out the step-downs are
25 different, then we calculate different damages for

1 those people.

2 Q In other words, if there's different
3 supply and demand in different Division I sports, an
4 analysis that predicts wages based on grouping sports
5 together would lead you to incorrect estimates?

6 A It would probably be due to some that
7 were too high and some that were too low, and
8 obviously -- but, of course it may not, depending on
9 whether or not there are significant differences.

10 Q Could you go to paragraph 39 of your
11 report, and do it slowly to give our reporter a short
12 break.

13 A Okay.

14 Q All right.

15 The third sentence of paragraph 39 of
16 your report says that "The labor market at issue in
17 this case is the market for Division -- NCAA
18 Division I assistant coaches in the United States."

19 Do you see that?

20 A Yes.

21 Q All right.

22 Now, earlier you testified that you have
23 not defined a market in this case. Is that your
24 testimony?

25 A Well, you have to be careful here.

1 When I talk about -- these people are in
2 the labor market that I'm going to analyze, but I'm
3 not drawing the edges of the labor market, I'm not
4 using concentration analysis or anything like that.

5 So, unfortunately, that word "labor
6 market" is maybe used multiple ways at different
7 times.

8 And, here, all I mean is that I'm going
9 to be analyzing this particular group of people for
10 evidence of -- direct evidence of monopsony power. A
11 very popular word nowadays.

12 By the way, invented by Joan Robinson, a
13 woman who knew her Latin.

14 Q All right.

15 So you have not defined any labor market
16 in the sense of trying to capture the set of
17 reasonable substitutes?

18 A Yes, I haven't tried to define the --
19 the perimeter of a labor market, let's put it that
20 way.

21 Q Right.

22 And so do you have any opinion,
23 for example, as to whether jobs coaching swimming
24 belong in the same market in the economic sense as
25 jobs coaching softball?

1 MR. STEWART: Object to the form.

2 A Well, I think I tried to make clear that
3 I didn't define the perimeters of a labor market for
4 each of these categories, so I haven't really taken a
5 position on that -- on that issue.

6 Q Okay.

7 In thinking about the supply and demand
8 factors that contribute to a wage level, is it
9 important to understand the set of jobs that are at
10 issue in those supply and demand curves?

11 A Well, you have to say something about
12 what the jobs are. You have to define them and
13 measure their wage rates.

14 Q So if -- if -- if people who have
15 certain skills have the ability to do one set of jobs
16 and people with a different set of skills have the
17 ability to do a broader set of jobs, could that
18 affect supply and demand in those two sets of jobs?

19 MR. STEWART: Object to the form of the
20 question, incomplete hypothetical, vague.

21 A Well, supply and demand is really a
22 result of the aggregation of the skills that people
23 have and what they're willing -- what you have to pay
24 them; in other words, how much they expect to
25 receive, how much they -- what will extract labor

1 demand, right?

2 A One of the many factors, supply and
3 demand.

4 Q So it might be that there are jobs
5 available to coaches in some sports that don't have
6 an equivalent in other sports, right?

7 MR. STEWART: Object to the form, vague.

8 A I'm not sure what you mean by that.

9 Q So a golf coach might work at a country
10 club, right?

11 A Oh, so you mean certain kind of
12 employers for certain -- is that what you mean?

13 Q You said it better than I did.

14 I'll try another question.

15 In different sports there could be
16 different -- in different sports there could be
17 bigger or smaller sets of employers, right?

18 A Yes, that's right.

19 Q And if -- if there are -- if there are
20 employers who are available to coaches in one sport
21 and not in the other, that could affect the wage
22 level, right?

23 A Yes.

24 Q And you -- since you haven't defined a
25 labor market in this case, you haven't defined any

1 it.

2 Do you have any opinion as to whether
3 supply and demand for coaching any sport in
4 Division I is broader or just limited to assistant
5 coaching jobs in Division I?

6 MR. STEWART: I'm sorry, I am going to
7 object, that is vague.

8 Maybe the witness could answer.

9 A I haven't actually studied that
10 question, so I don't have an opinion about that, no.

11 Q Would it be your expectation that the
12 wage level for coaching any particular sport is
13 dependent on supply and demand for jobs coaching that
14 sport other than just being an assistant coach in
15 Division I?

16 A It could.

17 It could.

18 Q But do you have any opinion as to
19 whether that is actually the case for any sport in
20 Division I?

21 A Other than just casual observation, I
22 have not -- I certainly haven't studied that issue.
23 I don't have an opinion, based on what this report is
24 about, on that topic.

25 Q So are you offering the opinion that the

1 wage level for any Division I sport, coaching that
2 sport, is limited to the supply and demand with
3 respect to Division I assistant coaching jobs in that
4 sport?

5 MR. STEWART: Object to the form.

6 A No.

7 The supply and demand is broader than.
8 That is why I didn't try to define the peripheries of
9 a market. It's as broad as anything that could
10 affect supply and demand for different kinds of
11 workers.

12 Q Right, and -- and jobs coaching a sport
13 outside of Division I could affect the wage level of
14 jobs coaching in Division I, right?

15 A Sure.

16 MR. STEWART: Object to the form.

17 Q I think I take it from your answer so
18 far, you have also not defined a geographic market in
19 this case?

20 A That is correct.

21 Q So you have no opinion, one way or the
22 other, as to whether supply and demand for jobs
23 coaching a particular sport is confined to a
24 particular geographic area?

25 A No, I don't have any opinion.

1 Yes, I don't have any opinion.

2 Q And do you have any opinion, one way or
3 the other, as to whether the wage level for jobs
4 coaching in Division I is a function of local supply
5 and demand?

6 A It could be.

7 Q As an economist, would it be your
8 expectation that the wage level for some jobs
9 coaching in Division I would be localized rather than
10 national?

11 A It could be.

12 Q But I am correct that you have not done
13 any analysis to answer that question?

14 A That's correct.

15 It's really not necessary, given the way
16 we construct our analysis of damages.

17 Q Well, sir, you did define a geographic
18 market in the Detroit nurses case, didn't you?

19 A Yes.

20 Q Okay.

21 So why did you do -- why did you define
22 a geographic market in the Detroit nurses case?

23 A Well, that was because the core of the
24 monopsony there is the mobility of the nurses,
25 that's -- that's really the basis, I think, for the

1 potential they have, monopsony power, in that market,
2 because the nurses are relatively immobile.

3 Q Is it your testimony that all coaches
4 who are volunteers are -- have more mobility than the
5 nurses that were involved in the Detroit case?

6 MR. STEWART: Object to the form of the
7 question.

8 A I haven't studied whether these have
9 more or less mobility than the nurses did.

10 Q Do you know whether some Division I
11 sports are played in Canada?

12 A I didn't quite catch what you said.

13 Q Do you know whether some Division I
14 sports are played in Canada?

15 A In Camden?

16 Q Canada.

17 A Oh. You mean the country?

18 Q Yes.

19 A Our great friendly northern neighbor.

20 You know, I don't know if the NCAA is
21 applicable in Canada.

22 Q Okay.

23 Do you know whether some of the sports
24 that Division I schools play are also played by
25 people maybe in other leagues in Canada?

1 A Yeah, I'm sure they are, yes. Lacrosse,
2 for one.

3 Q Right.
4 Ice hockey?

5 A Absolutely.

6 Q Right.
7 And you didn't study any relationship
8 between coaching jobs in Canada and the wage levels
9 for coaching ice hockey or lacrosse in Division I,
10 right?

11 A No, I did not.
12 Yes, I did not.

13 Q We'll get it right one of these times.
14 All right.

15 I want to talk a little bit about the
16 data you used.

17 A Yes.

18 Q All right.

19 So we'll try to take this step-by-step.
20 I think there will be a lot of numbers flowing
21 around, so I'm going to try to be clear about what
22 numbers we're both talking about.

23 Could you go to paragraph 61 of your
24 report.

25 A That is the data section?

1 school count.

2 So they had -- they had to -- the
3 data -- the observations had to satisfy all these
4 criteria. We had to have salaries, we had to have an
5 expansion, and we had to have access -- we had to
6 know what the data was in two different years, pre
7 and post.

8 So these are all the criteria that were
9 used to determine whether or not they could be used
10 in the regression analysis.

11 MR. RAPHAEL: Do you need to clarify
12 anything?

13 THE COURT REPORTER: No, I'm good.
14 Thank you.

15 Q So am I right that the schools that you
16 chose to include in your regression analysis were the
17 schools who added an additional paid coach in at
18 least one program after the bylaws were amended?

19 A Yes.

20 Q So if a school did not add any paid
21 coaches in any program where it had previously hired
22 a volunteer, you did not include that school's data
23 in your regression?

24 A That would be -- if they didn't, that
25 would certainly exclude them, but there may be other

1 reasons too.

2 Q Okay.

3 So, looking at the numbers corrected,
4 which are 85 schools you included, and 175 schools
5 you did not, is it fair to say that a majority of
6 schools for which you had usable data at the time of
7 your November 1 report did not hire an additional
8 paid coach in any sport where they had previously
9 hired a volunteer?

10 A I think that's true, yes.

11 MR. STEWART: Can I hear that back? I
12 got distracted. That question and answer, please.

13 (Whereupon, the requested portion is
14 read back by the reporter.)

15 MR. STEWART: I think that is ambiguous,
16 but go ahead.

17 THE WITNESS: That is why I said I think
18 it's true.

19 There is a lot of clauses in that
20 phrase, but I think it's true.

21 Q Okay.

22 Well, is it true that -- is it true that
23 90 schools for which you had usable data did not, as
24 of November 1, 2024, did not hire an additional paid
25 coach in any sport where they had hired a volunteer

1 where they had hired a volunteer during the class
2 period and not any others?

3 A Yes.

4 Q Okay.

5 And for those sports where schools that
6 hired an additional paid coach in some sports but not
7 others, you only included data in your regression for
8 the salaries in the sports where they hired an
9 additional paid coach?

10 A Yes.

11 Otherwise, they wouldn't be usable for
12 the step-down, they would be missing data.

13 Q Well, you didn't put in, say -- if
14 school A didn't hire an additional coach in
15 volleyball, but they did in golf, you would use them
16 for your golf regression and not your volleyball
17 regression, right?

18 A Yes.

19 Q Okay.

20 But you could have put in a zero for a
21 school that hired -- didn't hire a paid coach in golf
22 after the bylaws were amended and put that into your
23 regression, right?

24 A You could put a zero in there, sure.

25 Q But you didn't do that?

1 A No.

2 Q Why not?

3 A Well, because we were looking at the
4 salaries that were paid in the -- in the step-down
5 analysis.

6 If -- when it comes to calculating the
7 damages -- this is just for the purpose of the
8 step-down.

9 When it comes to calculating the
10 damages, we do take account of the point that you
11 just made, which is that if there is no assistant
12 coach that was paid, then there won't be any damage
13 assigned to the person who was hired as a volunteer
14 coach.

15 Q Okay.

16 Suppose there were -- do you know if at
17 any school that hired an additional paid coach in one
18 sport after the bylaw amendment whether they had any
19 volunteer coaches working after the bylaw amendment
20 in any other sports?

21 MR. STEWART: Object to the form of the
22 question, lacks foundation.

23 A I don't -- I wouldn't know that detail,
24 no.

25 Q Like, for example, did you know that

1 Rudy Barajas, who is one of the Plaintiffs, worked as
2 a volunteer after the bylaws were amended?

3 MR. STEWART: Object to the form of the
4 question.

5 A I did know that, yes.

6 Q Okay.

7 So, for Fresno State, where Rudy Barajas
8 coached -- you know that, right?

9 A Yes.

10 Q All right.

11 So for the sports in which Fresno State
12 hired an additional paid coach after the bylaws that
13 were amended, right, you put those data points into
14 your regression, right?

15 MR. STEWART: Objection, lacks
16 foundation.

17 A You mean -- I think it's explained here.
18 We put in the data if there was an
19 additional paid coach hired.

20 Q Right.

21 So if Fresno State hired an additional
22 paid coach in -- in softball after the bylaws were
23 amended, you made that part of the data you used for
24 your regression?

25 A Yes.

1 A Yes, that is correct.

2 Q Okay.

3 So does Rudy Barajas' salary of zero,
4 after the bylaws were amended, does that factor into
5 the market wage level?

6 A No, it doesn't.

7 Q It doesn't?

8 A No.

9 Q Why not?

10 A Well, because the whole point is that
11 the market wage is the wage that's paid, presumably
12 would be paid at Fresno State after Barajas left.

13 The market wage is the wage that
14 provides the compensation to allow you to track
15 people, that is what the market wage is.

16 Q Well, there was nothing prohibiting
17 Fresno State from paying Rudy Barajas, right?

18 MR. STEWART: Object to the form of the
19 question, lacks foundation.

20 Q No NCAA rule prohibited Fresno State?

21 A I don't think there was, no.

22 Q Okay.

23 Just so a clear record.

24 No NCAA rule prevented Fresno State from
25 paying Rudy Barajas in the 2023-2024 season, right?

1 A I understand that to be the case, yes.

2 Q So the amount of money that Rudy Barajas
3 was compensated at that time, right, reflected supply
4 and demand in the market, correct?

5 MR. STEWART: Object to the form of the
6 question.

7 A Well, no, it didn't, that is the
8 problem.

9 Q Why didn't it?

10 A Well, we have given about ten reasons
11 why it didn't, one of which is that there is a
12 continuing issue of payment, how it could easily be
13 the case that the expectation was that there would be
14 an unpaid coach, and that expectation could last for
15 some length of time. I don't know how long it lasted
16 in this case.

17 That is one reason.

18 Another reason is that it takes some
19 time for these things to adjust and for wage rates
20 to -- people who have previously worked, obviously,
21 at no wage, have volunteered, and they, themselves,
22 probably received some expectation of what they're
23 supposed to get, and that takes time to adjust.

24 So there are all kind of reasons why a
25 single example of one person doesn't tell you much

1 about what's actually happening in the market
2 overall.

3 I mean, for example, as you just
4 explained, there are 84 schools where people who
5 weren't being paid are now being paid.

6 Q I'm not --

7 A And I imagine that is the most.

8 Q So I appreciate, sir, your opinion that
9 there's a variety of reasons why the market rate that
10 you calculate is not what you contend the equilibrium
11 market rate is, okay, I appreciate that.

12 What I'm asking you is: Whatever the
13 market rate was in 2023-2024, whether or not you
14 think it was depressed, the fact that Rudy Barajas
15 earned zero, that factors into the market rate,
16 doesn't it?

17 A Well, it factors into the display -- it
18 is correct to say that it does have an effect on the
19 market -- on the supply and demand.

20 Q Thank you. That is what I was asking.

21 A Yes, it's just one observation.

22 Q Right.

23 A But I don't think it reflects what
24 supply and demand would be in the equilibrium.

25 Q Totally appreciate that.

1 But it is correct, sir, that Rudy
2 Barajas getting paid zero to coach after the bylaws
3 were amended affects supply and demand, right?

4 A It has an effect on supply and demand,
5 but, as I said, I don't think it affects what the
6 equilibrium wage would be at the point that we're
7 interested in calculating the market wage.

8 Q Right.

9 And you did not include a salary of zero
10 from Rudy Barajas, which is what he earned in
11 2023-2024, after the bylaws were amended, in your
12 regression analysis, correct?

13 A That's correct.

14 MR. RAPHAEL: Why don't we take a break
15 there.

16 MR. STEWART: Okay.

17 THE VIDEOGRAPHER: This concludes media
18 number four of the videotape deposition of Dr. Orley
19 Ashenfelter. The time is 3:11. We are off the
20 record.

21 (Brief recess taken.)

22 THE VIDEOGRAPHER: This begins media
23 number five of the videotape deposition of Dr. Orley
24 Ashenfelter. The time is 3:22. We are on the
25 record.

1 the schools for which you had usable data did not
2 hire an additional paid coach in any sport where they
3 hired a volunteer, right?

4 A Yes, that's right.

5 Q And that is the majority of schools for
6 which you had usable data, right?

7 A Yeah.

8 Q Now, those 90 schools that did not hire
9 an additional paid coach in the actual world after
10 the bylaws were amended, were those schools' data
11 used in your analysis in this case in any way?

12 A Those schools weren't used in the
13 regression analysis.

14 Q Were they used in the step-down?

15 A No. That is the regression analysis.

16 Q You -- okay.

17 So, did you do anything to compare --
18 strike that.

19 Did you do anything to determine whether
20 the 85 schools whose data you used in your step-down
21 analysis were representative of all schools in
22 Division I?

23 A No. There hasn't been any comparison
24 between those schools and the other schools.

25 Q So you don't have an opinion then, one

1 way or the other, as to whether the 85 schools whose
2 data you used in your step-down regression were
3 representative of all schools in Division I?

4 MR. STEWART: Objection, vague.

5 A No.

6 There was no -- there's no -- they
7 aren't intended to be necessarily representative,
8 they're the ones that expanded, as is described here.

9 Q Well, could it be that the schools that
10 were the ones who decided to expand their sports
11 programs after the bylaws were amended that they
12 differ in some ways from schools who didn't?

13 A Yes.

14 Q Could it be that the schools that
15 expanded their sports coaching staffs after the
16 bylaws were amended were schools that had more money
17 than schools who didn't?

18 MR. STEWART: Object to the form, and
19 vague.

20 A I haven't studied why they're different.
21 I mean, there's many possible
22 explanations.

23 I mean, not explanations, many possible
24 comparisons you could make.

25 I don't know what they would show.

1 A So the no hypothesis here is that the
2 step-down effect is zero, which would mean that the
3 lowest-paid was getting paid the same as the next
4 lowest-paid.

5 Q In other words, where you find that the
6 result of the regression is not statistically
7 significant, you don't have a level of confidence
8 that the step-down you found for that group of sports
9 is not zero?

10 MR. STEWART: Objection, vague.

11 A That's right.

12 Q Did you -- does your amended report find
13 that any results of your regressions are not
14 statistically significant?

15 MR. STEWART: Would you like to see?

16 THE WITNESS: Yeah, we can look at it.
17 I think they're more or less the same.

18 You can mark it if you want.

19 Q I'm not sure I have that, so if you
20 don't know without looking, I can't blame you for
21 that, I'm just wondering.

22 A I don't know without looking, but I
23 think the results are very similar.

24 They're not identical, but they are
25 similar.

1 MR. STEWART: They are what they are.

2 MR. RAPHAEL: Thank you.

3 A I don't think you're missing much, put
4 it that way.

5 Q Could it be the case that the coaches
6 who were hired as additional paid coaches in
7 2023-2024 were more skilled or experienced than the
8 coaches who volunteered during the class period?

9 MR. STEWART: A standing objection,
10 again.

11 A Well, I don't know.

12 Q You haven't studied whether the
13 qualifications of any coach who was hired as an
14 additional paid coach after the amendment compared to
15 the coach who volunteered in that sport at that
16 school during the class period?

17 A That's correct.

18 Q And why have you not done that?

19 A Well, I think, in part, because we don't
20 have the -- the data to deal with. You would have to
21 have -- you would have to know more about the
22 characteristics, I think, of the coaches in order to
23 do that kind of analysis.

24 We didn't -- the data we collected
25 doesn't have a whole lot of information about the

1 individual characteristics of the coaches.

2 Q And, as an economist, how would you go
3 about collecting the individual characteristics of
4 the coaches in order to compare the skills and
5 qualifications of coaches who were hired for paid
6 positions and the volunteers?

7 A Well, I think you could probably do it
8 the same way as -- as you would do any study of
9 individual determinants of pay. You would want to
10 ask for the characteristics -- well, you might have
11 to actually contact the person, the coach, to ask
12 them what their characteristics -- somehow you have
13 to find out the characteristics of the coach.

14 It might be that the person who
15 responded to our subpoena couldn't do that, in which
16 case you would have to contact the person.

17 The way we normally gather data on
18 schooling, experience, it is by contacting the person
19 and actually asking them.

20 Sometimes you can get it from
21 administrative data, but often we have to just ask
22 people.

23 Q Did you do anything to try to account
24 for or address the possibility that the coaches who
25 were hired as additional paid coaches after the

1 bylaws were amended had more skills or experience
2 than the coaches who were volunteers?

3 A No.

4 Q Is it possible that schools that paid
5 additional assistant coaches in 2023-2024 had higher
6 demand for coaching services than the schools who did
7 not?

8 MR. STEWART: Object to the form.

9 A It's possible.

10 Q Did you do anything to control for that?

11 A No.

12 Q If schools that paid assistant coaches
13 in 2023-2024 had higher demand for coaching services
14 than the schools that didn't, as an economist, would
15 that generally lead you to believe that they would
16 pay more than the other schools?

17 A Not necessarily. It depends on how
18 elastic the supply of coaches is, it would depend on
19 that.

20 It is likely they would hire more
21 coaches, not that they would pay them more.

22 Q And you -- the elasticity of supply of
23 coaches is how much a change in the salary of the
24 coach affects coaches' willingness to work?

25 A Yes.

1 Q And you haven't measured labor supply
2 elasticity for any coaching in any sport, right?

3 A That's correct.

4 Q And you haven't measured the elasticity
5 of demand for coaching services in any sport, right?

6 A That's correct.

7 Q Did you control for age in your damages
8 model in this case?

9 A No.

10 Q Did you -- well, why not?

11 A I don't think we have data on the age of
12 the coaches.

13 Q Did you control for tenure in your
14 damages model in this case?

15 A No.

16 Q Why not?

17 A Same reason, I don't think we had that
18 data.

19 Q Did you control for experience in your
20 damages model in this case?

21 A No.

22 Q Why not?

23 A Basically, the same reason, I don't
24 think we have data on that.

25 Q Did you control for any

1 employer-specific effects in your model in this case?

2 A I'm trying to think.

3 The -- the -- not in the -- in the -- in
4 the relative wage analysis, no.

5 Q Did you do it in any other way?

6 A Well, in the way that we would calculate
7 the damages, we would use the step-down and then
8 apply it to the assistant coach that was in the same
9 program as the formerly volunteer coach position was
10 in, so there would be a natural adjustment for the
11 level of salaries at the university and in the sport.

12 Q In the animation workers' case you did
13 control for how compensation normally varies across
14 workers based on their individual characteristics,
15 didn't you?

16 A Well, that is because we had the data on
17 individuals, yes.

18 We compared the same people.

19 Q Did you think that was important to your
20 analysis in that case?

21 A It was a very easy way to get rid of
22 having to control for a lot of other derivatives.

23 Q All right.

24 But you wanted to -- so you wanted to
25 control for that in the animation case, right?

1 A Yes.

2 MR. STEWART: Objection, vague.

3 Q In the animation case you wanted to
4 control for the characteristics of workers that could
5 affect one worker being paid a different amount than
6 the other?

7 A Yes.

8 Q And in your damages model in the
9 animation case you controlled for age and tenure and
10 gender, right?

11 A I -- I think you can't -- if you're
12 looking at fixed effects, you can't really control
13 for gender because that doesn't change, so I'm not --
14 we couldn't have controlled for that unless we used
15 it as an interaction between the step -- the increase
16 in pay. I don't think that we did use that.

17 And experience, that could matter
18 because, normally, experience is entered as a
19 quadratic, so if you take the difference in a
20 quadratic equation, you get a linear term, so we
21 probably did have experience in there, and maybe even
22 tenure, but I think the analyses used the same.

23 The fixed effects wouldn't have
24 controlled for gender. I don't think it controlled
25 for gender. That would be the only way you could do

1 A, they don't get any premium.

2 Okay. Now, what we're going to do is
3 we're going to take the difference between the
4 guys -- the lowest guy in A compared to the lowest
5 guy -- next lowest in A.

6 That is what we're trying to measure,
7 that gap, not -- not the difference between A and B.

8 So that difference is basically
9 controlled for.

10 In other words, once we take the
11 difference between the two coaches in A, we subtract
12 out the part that is due to the extra compensation
13 for the cost of living.

14 In other words, the gap between the two
15 is -- is completely comparable to the gap to, you
16 know, someplace in Birmingham or someplace.

17 Q You're saying that in this case you did
18 some controlling for employer-specific effects?

19 A Yes.

20 Q In this case you did not control for
21 employee-specific effects?

22 A That is correct.

23 I don't know if that was clear.

24 Did anybody understand that?

25 Q I did.

1 So -- let's just take an example.

2 If in the actual world after the bylaws
3 were amended the new paid-coach earned 75 percent of
4 what the next highest paid-coach earned, okay, you
5 just assumed -- you know, let's say the 75 percent
6 was the step-down that you calculated, right?

7 You assumed that that ratio would be the
8 same for the coaches who volunteered in the class
9 period, right?

10 A Yes.

11 Q All right.

12 But that ratio might be different if the
13 coach who was actually hired was a better coach
14 compared to the next highest-paid coach than the
15 volunteer was, right?

16 MR. STEWART: Object to the form.

17 A Well, that is possible, sure.

18 MR. RAPHAEL: This has been a
19 particularly intense hour for our court reporter.
20 Maybe we'll take a break here. I'll check the time
21 on the record and see -- see how we can wrap this up.

22 MR. STEWART: Okay, great.

23 Thank you.

24 THE VIDEOGRAPHER: This concludes media
25 number five of the videotape deposition of Dr. Orley

1 Ashenfelter. The time is 4:10. We're off the
2 record.

3 (Brief recess taken.)

4 THE VIDEOGRAPHER: This begins media
5 number six of the videotape deposition of Dr. Orley
6 Ashenfelter. The time is 4:22. We are on the
7 record.

8 Q Does your step-down method measure
9 whether class members are injured or how much they
10 were injured?

11 A How much.

12 Q Your step-down method doesn't measure
13 whether class members were injured?

14 A No, it measures what the market rate
15 would be, and that needs to then be combined with
16 additional information to get an injury.

17 Q What information is that?

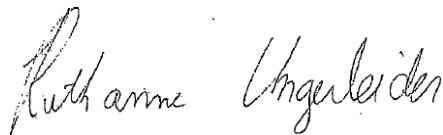
18 A Well, the -- it's then applied to the
19 next lowest-paid assistant coach in the place where
20 the person whose damages are being calculated is
21 located.

22 Q We talked a little bit about this
23 earlier, I wanted to make sure I understood it: Your
24 amended report from November 26, you talked about how
25 there was an issue with the combined coaches.

C E R T I F I C A T E

I, RUTHANNE UNGERLEIDER, a Certified Court Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the stenographic notes of the deposition of said witness who was first duly sworn by me, on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel in this case, nor am I financially interested in this case.



RUTHANNE UNGERLEIDER, C.C.R., C.R.R.

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